



BILLING CODE: 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review **Fiduciary Activities**

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The OCC is soliciting comment concerning the renewal of its information collection titled "Fiduciary Activities." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN **FEDERAL REGISTER**].

ADDRESSES: Commenters are encouraged to submit comments by e-mail, if possible. You may submit comments by any of the following methods:

- E-mail: prainfo@occ.treas.gov.

- Mail: Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557-0140, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Fax: (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "1557-0140" in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-0140, U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov*.

You may review comments and other related materials that pertain to this information collection¹ following the close of the 30-Day comment period for this notice by any of the following methods:

- Viewing Comments Electronically: Go to *www.reginfo.gov*. Click on the "Information Collection Review" tab. Underneath the "Currently under Review" section heading, from the drop-down menu, select "Department of Treasury" and then click "submit." This information collection can be located by searching by OMB control number "1557-0140" or "Fiduciary Activities." Upon finding the appropriate information collection, click on the related "ICR

¹ On November 13, 2018, the OCC published a 60-day notice for this information collection.

Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.
- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks OMB to extend its approval of this collection.

Title: Fiduciary Activities.

OMB Control No.: 1557-0140.

Description: The OCC regulates the fiduciary activities of national banks and federal savings associations (FSAs), including the administration of collective investment funds (CIFs), pursuant to 12 U.S.C. 92a and 12 U.S.C. 1464(n), respectively. Twelve CFR part 9 contains the regulations that national banks must follow when conducting fiduciary activities, and 12 CFR part 150 contains the regulations that FSAs must follow when conducting fiduciary activities. Regulations adopted by the former Office of Thrift Supervision, now recodified as OCC rules pursuant to title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,² have long required FSAs to comply with the requirements of the OCC's CIF regulation.³ Thus, 12 CFR 9.18 governs CIFs managed by both national banks and FSAs.

Twelve CFR part 9 and §§ 150.410-150.430 require that national banks and FSAs document the establishment and termination of each fiduciary account and maintain adequate records. Records must be retained for a period of three years from the later of the termination of the account or the termination of any litigation. The records must be separate and distinct from other records of the institution.

Twelve CFR 9.9 and 12 CFR 150.480 require national banks and FSAs to note the results of any audit conducted (including significant actions taken as a result of the audit) in the minutes of the board of directors. National banks and FSAs that adopt a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

² 76 FR 48950 (August 9, 2011).

³ See 12 CFR 150.260(b)(3).

Twelve CFR 9.17(a) and 150.530 require that a national bank or FSA seeking to surrender its fiduciary powers file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require national banks and FSAs to establish and maintain each CIF in accordance with a written plan approved by the board of directors or a committee authorized by the board. The plan must include provisions relating to:

- Investment powers and policies with respect to the fund;
- Allocation of income, profits, and losses;
- Fees and expenses that will be charged to the fund and to participating accounts;
- Terms and conditions regarding admission and withdrawal of participating accounts;
- Audits of participating accounts;
- Basis and method of valuing assets in the fund;
- Expected frequency for income distribution to participating accounts;
- Minimum frequency for valuation of fund assets;
- Amount of time following a valuation date during which the valuation must be made;
- Bases upon which the institution may terminate the fund; and
- Any other matters necessary to define clearly the rights of participating accounts.

Twelve CFR 9.18(b)(1) (and 150.260 by cross-reference) require that national banks and FSAs make a copy of any CIF plan available for public inspection at their main offices and provide a copy of the plan to any person who requests it.

Twelve CFR 9.18(b)(4)(iii)(E) (and 150.260 by cross-reference) require that national banks and FSAs adopt portfolio and issuer qualitative standards and concentration restrictions for short-term investment funds (STIFs), a type of CIF.

Twelve CFR 9.18(b)(4)(iii)(F) (and 150.260 by cross-reference) require that national banks and FSAs adopt liquidity standards and include provisions that address contingency funding needs for STIFs.

Twelve CFR 9.18(b)(4)(iii)(G) (and 150.260 by cross-reference) require that national banks and FSAs adopt shadow pricing procedures for STIFs that calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest from the STIF's amortized cost per participating interest, and to take certain actions if that difference exceeds \$0.005 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(H) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest and provide for reporting the results.

Twelve CFR 9.18(b)(4)(iii)(I) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a national bank or FSA to disclose to the OCC and to STIF participants within five business days after each calendar month-end the following information about the fund: total assets under management; mark-to-market and amortized cost net asset values; dollar-weighted average portfolio maturity; dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month; and certain other security-level information for each security held.

Twelve CFR 9.18(b)(4)(iii)(J) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a national bank or FSA that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events.

Twelve CFR 9.18(b)(4)(iii)(K) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, certain procedures in the event that the STIF has repriced its net asset value below \$0.995 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(L) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for initiating liquidation of a STIF upon the suspension or limitation of withdrawals as a result of redemptions.

Twelve CFR 9.18(b)(6)(ii) (and 150.260 by cross-reference) require, for CIFs, that national banks and FSAs, at least once during each 12-month period, prepare a financial report of the fund based on the audit required by 12 CFR 9.18(b)(6)(i). The report must disclose the fund's fees and expenses in a manner consistent with applicable state law in the state in which the national bank or FSA maintains the fund and must contain:

- A list of investments in the fund showing the cost and current market value of each investment;
- A statement covering the period after the previous report showing the following (organized by type of investment):
 - A summary of purchases (with costs);
 - A summary of sales (with profit or loss and any investment change);
 - Income and disbursements; and
 - An appropriate notation of any investments in default.

Twelve CFR 9.18(b)(6)(iv) (and 150.260 by cross-reference) require that a national bank or FSA managing a CIF provide a copy of the financial report, or provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The national bank or FSA may provide a copy to prospective customers. In addition, the national bank or FSA must provide a copy of the report upon request to any person for a reasonable charge.

Twelve CFR 9.18(c)(5) (and 150.260 by cross-reference) require that, for special exemption CIFs, national banks and FSAs must submit to the OCC a written plan that sets forth:

- The reason the proposed fund requires a special exemption;
- The provisions of the fund that are inconsistent with 12 CFR 9.18(a) and (b);
- The provisions of 12 CFR 9.18(b) for which the national bank or FSA seeks an exemption; and
- The manner in which the proposed fund addresses the rights and interests of participating accounts.

Type of Review: Extension without change of an approved information collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 320.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 115,125 hours.

On November 13, 2018, the OCC issued a notice for 60 days of comment regarding the collection, 83 FR 56400. Two comments were received. One comment was from an advocacy group and one was from a trade association.

One commenter requested that the OCC allow flexibility in the timing of a final audit required by § 9.18(b)(6), which requires a national bank administering a CIF to prepare a financial audit of the fund once every 12 months. The commenter specifically recommended that the OCC should allow a bank that is terminating a fund within 15 months after the last audit to wait until the fund has terminated to complete the final audit.

The second commenter proposed the elimination of § 9.9(a) and (b), which require national banks to include in the minutes of the board of directors the results of any audits conducted of a national bank's fiduciary activities (including significant actions taken as a result of the audit). The commenter stated that these § 9.9 requirements are unnecessarily burdensome and overreaching in that they inappropriately prescribe the content and level of detail of information to be included in board minutes and presuppose that the board of directors should discuss the results of every audit conducted pursuant to part 9, regardless of the materiality of the audit to the bank.

In response to both comments, the OCC notes that the OCC cannot revise or rescind regulations through the PRA renewal process. The OCC also notes that in 2015, as part of the OCC's ten-year regulatory review required under section 222 of the Economic Growth and Regulatory Paperwork Reduction Act ("EGRPRA"), the OCC issued notices soliciting comments on all OCC regulations, including 12 CFR Part 9.⁴ In response to the relevant OCC notice regarding 12 CFR Part 9, the OCC received the same comment regarding § 9.18(b)(6), a recommendation that the OCC allow a national bank that is terminating a fund within 15 months after the most recent audit to wait until the fund has terminated to complete the final audit. The

⁴ See Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 79 FR 32171, 32178 (June 4, 2014).

OCC did not agree with the proposed recommendation and did not adopt it in the part 9 rules.⁵

The OCC stated that in many instances, banks should be able to schedule fund terminations to occur at or just prior to the end of a plan year.⁶

The OCC did not receive any comments regarding § 9.9(a) or (b) in response to the OCC EGRPRA notice regarding 12 CFR Part 9. The OCC therefore did not rescind or propose any revisions to § 9.9 in connection with the review required under EGRPRA. Given the lack of comments on § 9.9 during the most recent EGRPRA review and the OCC's inability to rescind or revise § 9.9 through this PRA renewal, the OCC has not adopted the proposed recommendation to rescind the board minutes-related requirements in § 9.9(a) and (b).

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

⁵ 82 FR 8082, 8088 (Jan. 23, 2017).

⁶ *See id.*

Dated: March 22, 2019.

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[FR Doc. 2019-06020 Filed: 3/28/2019 8:45 am; Publication Date: 3/29/2019]